IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.634 of 1992

Date of Decision: January 24, 2007

Harpal

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Kapil Aggarwal, Advocate,
for the petitioner.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

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Aggrieved against his conviction under Sections 279 and 304-A IPC and the award of one year rigorous imprisonment, coupled with fine of Rs.1000/-, the petitioner has filed this revision.

On 20.8.1983, the petitioner was driving bus No.HYN-3096 and in the vicinity of Veterinary Hospital on Yamuna Nagar-Jagadhari road when it hit a cyclist, named, Samey Singh while he (the cyclist) was in the process of crossing the road. The cyclist was crushed under the bus and died

instantaneously. Incident was witnessed by Mithan Lal and Punnu Ram. The petitioner was charge-sheeted for an offence under Sections 279/304-A IPC. Trial of the petitioner followed on plea of not guilty. The trial court, after examining six prosecution witnesses, held the petitioner guilty of both the charges under Sections 304-A IPC and 279 IPC and sentenced him to undergo imprisonment, as afore-mentioned.

The petitioner partially succeeded in appeal. Though his conviction under Section 304-A IPC was maintained, but he was acquitted of the charge under Section 279 IPC purely on the technical ground that he could not be held responsible for both the offences arising out of the same incident. The sentence awarded to the petitioner was, however, maintained. Thus, he has filed the present revision petition before this court.

The counsel for the petitioner has pointed out that the petitioner should not now be made to suffer the consequences of this trial and sentence at this belated stage. Counsel points out that the incident in this case is of the year 1983 and the petitioner stands convicted since the year 1992, he has suffered enough of his act, which does not contain any element of intention or motive. The counsel has accordingly confined his prayer only for release of the petitioner on probation. The counsel would submit that the petitioner is a Government employee and with the passage of time is now on the verge of retirement. Any sentence, now awarded to him, would seriously prejudice his case for the grant of pensionary benefits. This has been pleaded as an additional factor by the counsel to seek release of the petitioner on probation. In support of his contention,

the counsel has drawn my attention to Gobind Ram Vs. The State of Haryana, 1978 C.L.R. 255 and Prem Singh Vs. The State of Punjab, 1980 C.L.R.235.

It cannot be denied that this incident is rather old. The petitioner would suffer the consequences of a sentence which has been awarded to him due to an incident which is 24 years old. I see reason and justification in the prayer made by the counsel for the petitioner that if conviction and sentence are allowed to stand, it may affect the petitioner at this belated stage for grant of pension and pensionary benefits. If that happens, his family would also suffer the consequences of his action. The petitioner has apparently suffered enough because this conviction and sentence must be weighing in his mind for all these years. Nothing has been pointed out before me by the learned State counsel, which could stand in the way of the petitioner for grant of his release on probation. A prayer for release of the petitioner on probation was made before the trial Magistrate, which, however, was declined, but the Appellate Court did not take this aspect into consideration at all. The Hon'ble Supreme Court in the case of Chandreshwar Sharma Vs. State of Bihar, JT 2000(2) SC 36 has held that reading of Section 361 and 360 of the Code together would indicate that in any case where the courts have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of said provision then it shall record in its judgment the specific reasons for not doing so. This apparently has not been done by the Appellate Court and thus the court has over looked the provisions of Sections 360 and 361 Cr.P.C. It can be said that the Appellate Court did not perform its mandatory duty.

Taking all these aspects into consideration, I am of the view that the submission made by the counsel for the petitioner would need acceptance. Accordingly, while disposing of this petition, I am inclined to direct that the petitioner be released on probation for a good conduct instead of sentencing him and he be directed to enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Jagadhari within one month of this order.

The present revision petition is accordingly disposed of.

January 24, 2007 (RANJIT SINGH)
ramesh JUDGE